A.F.R.

HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

SINGLE BENCH: HON'BLE SHRI S.R. NAYAK, CJ.

WRIT PETITION NO. 2029 OF 2004.

PETITIONER		Smt. Jaitrinbai Dheamar, aged about 72 years, widow of Late Jhagroo Dheamar, President-Machhnua Swa Sahayata Samiti, Gram – Dhanora, Tehsil and Distt. Durg (Chhattisgarh)
	Vs.	
RESPONDENTS	1.	State of Chhattisgarh, through, the Secretary, Department of Panchayat Evam Gramin Vikas Vibhag, Dau Kalyan Singh Bhawan, Raipur, Chhattisgarh.
	2.	The Director (Panchayat), Chhattisgarh, Raipur.
	3.	The Janpad Panchayat, Durg, Distt. Durg (Chhattisgarh)
	4.	The Chief Executive Officer, Janpad Panchayat – Durg, Distt. Durg (Chhattisgarh)
	5.	Jai Laxmi Machhua Sahkari Samiti, through : Its President village – Dhanora, Distt. Durg (Chhattisgarh)
	6.	The Fisheries Inspector, Dhanora, Distt. Durg (CG)

Present: Smt. Fouzia Mirza,learned counsel for the petitioner.
Shri Utkarsh Verma, learned Dy. G.A. for respondents 1,2 and 6.
Shri Kishore Bhaduri, learned counsel for respondent No.5.

ORAL ORDER
(Passed on 1st May, 2006)

In this writ petition, the validity of the action of the Janpad Panchayat, Durg, the 3rd respondent herein, in granting fishing rights in favour of the Jai Laxmi Machhuva Sahkari Samiti, the 5th respondent herein, is called in question. One Punit Ram was the Panch of 3rd respondent-Panchayat and at the same time he was also the President of the 5th respondent-Samiti which is a co-operative Society registered under Chhattisgarh Cooperative Societies Act, 1960. It appears that in

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pursuance of the notification No. F-11/2/36/02/986/M dated 24.03.2003 issued by the 3rd respondent calling for applications for grant of fishing right, the 5th respondent-society and certain others applied for the grant. The 3rd respondent-Janpad Panchayat, having noticed that the 5th respondent-society falls within the preferred category of applicants, granted the fishing right in favour of the 5th respondent-society by its order dated 08.10.2002 for a period of 7 years. The petitioner herein is the President of Machh Swa Sahayata Samiti. Being aggrieved by the above action of the 3rd respondent-Janpad Panchayat, she preferred an appeal to the Collector, Durg District. The Collector, Durg District having opined that the grant of fishing right in favour of the 5th respondent-society was not in accordance with rules and guidelines issued by the Government from time to time set aside the grant by his order dated 25.02.2003. Feeling aggrieved by the above order of the Collector, Durg, the 5th respondent herein, preferred Revision No.65/A-89/02-03 to the Director (Panchayat), the 2nd respondent herein. The Director by his order dated 18.05.2004 allowed the revision and set aside the order of the Collector dated 25.02.2003. Hence, this writ petition.

(2) Heard the learned counsel for the parties. Smt. Fouzia Mirza appearing for the petitioner would contend that fishing right granted to the 5th respondent-cooperative society is *ex facie* illegal and violative of the provisions of Section 100 of the Chhattisgarh Panchayat Raj Adhiniyam 1993 (for short ' the Adhiniyam'). Elaborating the contention, the learned counsel for the petitioner would contend that as on the date of the grant of fishing right in favour of the 5th respondent-society, its President, namely, Punit Ram was a Panch of the 3rd respondent-Janpad

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Panchayat and therefore, the bar enacted in Section 100 was attracted. Alternatively, she would contend that the Collector, Durg District in his order dated 25.02.2003 held that the grant of fishing right made in favour of the 5th respondent was even otherwise invalid inasmuch as it was granted in violation of rules, norms and guidelines issued by the Government from time to time and this ground stated by the Collector, Durg was not at all appreciated by the 2nd respondent while allowing the revision filed by the 5th respondent-society. On the other hand, learned counsel appearing for the State authorities as well as the 5th respondent would submit that the bar contained in Section 100 of Adhiniyam has no application to the facts of this case, for, it is not that Punit Ram the then President of the 5th respondent-cooperative society under any contract with the 3rd respondent-Janpad Panchayat had acquired any interest or right; that the 5th respondent-cooperative society acquiring a right or interest under the contract entered into between the 3rd respondent and the 5th respondent-cooperative could not be equated to a contract between Punit Ram and the 3rd respondent-Panchayat. It was also pointed out that under Section 36 of Adhiniyam there is no bar for Janpad Panchyat to become an office-bearer or member of the cooperative society and looking from that angle also, the grant made by the 3rd respondent in favour of the 5th respondent-cooperative society could not be faulted with and that grant cannot be nullified only on the ground that one of the members or the office bearers among 30 total members of the 5th respondent happened to be a Panch of the 3rd respondent-Panchayat also.

(3) Having heard the learned counsel for the parties, I am of the considered opinion that it is not a fit case for the Court to step in under Article 226 of the Constitution and nullify the grant made by the 3rd respondent-Janpad Panchayat in favour of the 5th respondent-cooperative society. Section 100 of the Adhiniyam provides that if a member or office bearer or servant of Panchayat knowingly acquires directly or indirectly *any personal share or interest* (emphasis supplied) in any contract or employment with, by or on behalf of a Panchayat without the sanction of or permission of the prescribed authority, he shall be deemed to have committed an offence under Section 168 of the Indian Penal Code, 1868. What is prohibited under Section 100 of Adhiniyam is that a member or office bearer or servant of the Janpad Panchayat under any contract or arrangement is not entitled to acquire either directly or indirectly any interest or right. It is nobody's case that under any contract between the 3rd respondent Janpad Panchayat and Punit Ram, the then President of the 5th respondent-cooperative society, he had acquired any personal share or interest and , therefore, he is liable to be punished as envisaged under Section 100 of the Adhiniyam. No other provisions of Adhiniyam was brought to my notice by the learned counsel for the petitioner which prohibits the Janpad Panchayat from parting with its largesse in favour of any cooperative society or any other society, if an office bearer or a member of such society happened to be a member or office bearer of the Janpad Panchayat also. In that view of the matter, the provisions of Section 100 of the Adhiniyam are of no help to the petitioners to contend that since Punit Ram, at the relevant point of time, was the President of the 5th respondent-cooperative society, the 3rd respondent-Janpad Panchayat ought not to have granted fishing right in favour of the 5th

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respondent-cooperative society. At this stage itself, it needs to be noticed that a cooperative society registered under the provisions of the Chhattisgarh Cooperative Societies Act, 1960 has a distinct and separate legal entity than the personality of the members constituting it. The personality of the cooperative society cannot be equated with that of the members constituting it. Looking from that angle also, the bar contained in Section 100 of Adhiniyam could not be applied to the facts of this case.

(4) Of course, in the impugned order, the 2nd respondent quite curiously has stated that the grant made in the favour of the 5th respondent-cooperative society is in accordance with the norms and guidelines contained in the Government Order dated 24.03.2003 completely forgetting the fact that the fishing right was granted by the 3rd respondent in favour of the 5th respondent-cooperative society well before that order was issued by the Government, that is to say, on 08.10.2002 itself. Although, it was vaguely contended before me by the learned counsel for the petitioner that the grant made in favour of the 5th respondent even otherwise, is illegal inasmuch as it was granted in violation of the rules, norms and guidelines, the learned counsel was not in a position to pinpoint what are those norms, rules and regulations which have been violated. Above all, another circumstance which weighs with the Court in the decision-making is the fact that though this writ petition was filed in the year 2004, no interim order was granted. Resultantly, the 5th respondent-cooperative society has been exploiting the fishing right granted to it as far back as on 05.08.2002 and therefore, it may not be appropriate at this stage to interfere with that right already exploited for

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(5) In the result and for the foregoing reasons, the writ petition is dismissed. The parties are however directed to bear their respective costs in this writ petition.

Sd/-
Chief Justice
Judge

Bini.